09/08/03

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

LODGIN, INC. D/B/A
HOLIDAY INN CITY CENTER [1]/

Employer

and Case 9-RC-17459

HOTEL EMPLOYEES RESTAURANT EMPLOYEES
INTERNATIONAL UNION [2]/

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, [3]/ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

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[1]/ The Employer's name appears as amended at the hearing.

[2]/ The Petitioner's name appears as amended at the hearing.

[3]/ Both parties timely filed briefs which I have carefully considered in reaching my findings and conclusions in the Decision.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section (2), (6) and (7) of the Act.

5. The Employer, a corporation, operates a hotel in Columbus, Ohio where it employs approximately 63 employees, referred to by the Employer as associates, in the unit found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent a unit comprising of all housekeeping, laundry and food and beverage employees employed by the Employer at its Columbus, Ohio facility, excluding all office clerical employees, front office employees, maintenance employees, all employees furnished by supplier employers and all professional employees, guards and supervisors as defined in the Act. The Employer maintains that any unit must include, in addition to the employees sought by the Petitioner, the front office employees, maintenance employees and employees furnished by its two supplier employers, ARRA Corporation (ARRA) and Food Team, Inc. (Food Team). The Employer contends that it is a joint employer with ARRA and Food Team of the employees furnished by these two supplier employers at its Columbus, Ohio facility. Although provided with notice of the hearing, neither ARRA or Food Team made an appearance at the hearing nor did they request that the hearing be postponed. Indeed, ARRA administratively advised the Region that it did not intend to appear at the hearing or participate in this proceeding. Food Team merely administratively advised the Region, prior to the hearing, that it had not decided whether it intended to participate but did not enter any appearance at the hearing.

In view of my ultimate finding and the prior notice of hearing served on ARRA and Food Team, it could not be argued that any party was denied due process by proceeding with the hearing. *M.B. Sturgis, Inc., Jeffboat Division, American Commercial Marine Service Company and T.P. & O. Enterprises, Inc.*, 331 NLRB No. 173 at 1023 (2000). The Petitioner declined to take a position with respect to whether the Employer is a joint employer with ARRA and/or Food Team for the employees furnished by the supplier employers for the Employer's Columbus, Ohio operation, but has taken the position that such supplied employees, in any event, should be excluded from the unit. However, the Petitioner expressed a willingness to proceed to an election in any unit found appropriate.

The parties stipulated, and the record shows, that the general manager, Hammand Shah; the assistant general manager/director of operations, Jeff Smith; the front office manager/assistant director of operations, David Brooks; the revenue manager/assistant front office manager, Paul Faisant; the executive housekeeper, Stephanie Gilmore; the assistant executive housekeeper, Greg Williams; chef, a currently vacant position; and the chief engineer, a currently vacant position, have the authority to hire and discipline employees or to effectively recommend such action or to effectively direct employees' work in a manner requiring the use of independent judgment and are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit.

The parties are also in agreement that the general manager's secretary, the controller, the assistant controller, the sales coordinator, sales managers, the director of sales and the human resources manager could not properly be included in any unit found appropriate. Although the reason(s) for excluding these individuals from the unit are not clear from the testimony, it appears from the record that they are office clerical, managerial or professional employees or otherwise do not share a community of interest with the unit employees. Accordingly, in agreement with the parties, I shall exclude them from the unit. However, the parties are in disagreement over the unit placement of the acting chief engineer, John Terry. Contrary to the Employer, the Petitioner would apparently exclude Terry from the unit as a maintenance employee as well as on the additional ground that he is a statutory supervisor.

I. The Employer's Operation:

The Employer's hotel consists of a single facility located in Columbus, Ohio. The facility has 11 floors above ground and a basement, an outside pool, and a parking area operated by a private firm. The lobby, several administrative offices, a public restaurant (Green Street Restaurant) and bar/lounge (Green Street Bar), several banquet and conference rooms, restrooms, a time clock, a laundry and a kitchen are located on the first floor. In addition, Avis Rent-A-Car maintains an office on the first floor of the facility. The main entrance opens into the lobby and is used by both guests and employees to enter and exit the hotel. The remaining floors of the hotel consist of 240 guest rooms, several banquet and meeting areas and numerous storage closets. The eleventh (top) floor is referred to as the "priority club" and its rooms are leased to priority guests. In addition, to the special services, such as a continental breakfast in the morning and hors d'oeuvres and drinks in the evening, provided the priority guests by a concierge or other hotel personnel, there is a club room which serves as a "lite restaurant" and other amenities located on the priority floor. The basement houses the maintenance shop, employee lockers and a cafeteria, which is supplied by the hotel kitchen, available only to hotel personnel.

The hotel is open around-the-clock, 365 days per year. However, the restaurant and bar, which serve the general public as well as guests, are opened only during specific scheduled hours of operation. The general manager, Hammad Shah, who has held this position for approximately 6 months, is responsible for the overall operation of the hotel. Shah is assisted by Smith, who is generally present during the day, and Brooks, who primarily works at night. The other members of supervision and apparently in some cases various groups of employees report directly to Smith or Brooks. Hiring decisions are initiated by department heads in conjunction with the human resources manager, but Shah's approval is required before anyone can be hired. Although the department heads can apparently initiate discipline, Shah must approve any discharge.

The Employer's managers and supervision, as well as the controller, assistant controller, sales staff, human resources manager, and other secretarial and office personnel, whom the parties agree are properly excluded from the unit, primarily work out of first floor locations. In addition to these individuals who are located on the first floor, the Employer's operation primarily consists of a housekeeping department, a food and beverage department, a front office department and a maintenance department. All the employees whom the parties agree are included in the unit, as well as those in dispute, work in one of these four departments. All hourly-paid employees punch a time clock located on the first floor. Moreover, all employees

employed exclusively by the Employer are eligible for health insurance, dental insurance, life insurance, vacation days, paid sick leave and a 401(k) plan. However, the employees furnished by ARRA and Food Team, discussed in more detail in the joint employer and unit scope portions of the Decision, are hired and paid by the supplier employers and are not entitled to any of the benefits available to employees employed solely by the Employer. Each department conducts separate daily "huddles" at which the day's agenda is discussed. At these "department huddles" the lobby ambassador for the day, which rotates among the supervisory personnel, discusses any special problems reported by the guests. In addition, the Employer conducts periodic "guest tracking" meetings among all employees at which problems are discussed. The Employer also has a safety committee which includes participants from all departments. Finally, the Employer has a planning committee made up of various personnel from all departments which meets periodically to discuss problems and establish procedure.

The housekeeping department employs 17 room attendants, 3 house persons, 4 housekeeping inspectors, 6 laundry attendants, and a commercial attendant. In addition to the room attendants it directly employs, the Employer utilizes the services of seven room attendants, discussed in more detail under the unit scope portion of the Decision, supplied by ARRA. The executive housekeeper, Stephanie Gilmore, who reports to Smith, is in charge of the housekeeping department. Gilmore is assisted by the assistant executive housekeeper, Greg Williams. Gilmore or Williams schedules the housekeeping department employees and gives them their work assignments.

The room attendants, regardless of whether they are employed exclusively by the Employer or supplied by ARRA, are responsible for the cleanliness of the rooms. They are assigned "a board" which lists the rooms they are to clean during the shift. A board generally consists of 16 rooms. The rooms must be cleaned to standards established by the hotel. In addition, room attendants may occasionally be called on to clean other areas of the hotel by supervision.

The house persons help support the room attendants by providing them with linen and other supplies. In addition, the house persons are responsible for vacuuming, sweeping and mopping the hallways and stairwells, cleaning the elevators and polishing brass. They also make sure that there is a sufficient inventory of linen, soap and supplies available.

The housekeeping inspectors are responsible for checking guest rooms to make sure they have been cleaned according to the Employer's standards. Each inspector is responsible for an assigned number of rooms. In the event a room is not cleaned according to established standards, the housekeeping inspector will correct the problem if it is something minor or may have the room attendant return and reclean the room so it meets the Employer's criteria. In addition, housekeeping inspectors may help attendants clean rooms in emergency situations. Finally, housekeeping inspectors are responsible for entering the rooms into the computer as they are cleaned, indicating whether they are vacant or occupied, so the front desk employees will know whether a room can be assigned to a guest.

The laundry attendants are responsible for washing and drying all linen from guest rooms and the food and beverage area. After the material is washed and dried, the laundry attendants

fold the linen, discarding any unusable items, and have the supplies ready for the room attendants and food and beverage employees the next day.

The commercial attendant is responsible for cleaning the lobby, restaurant and front office areas. He also cleans the restrooms in the lobby and makes sure the area around the public telephones is clean. The commercial attendant is also responsible for emptying garbage from the offices and front desk areas of the hotel.

The house attendants and house persons report at various times in order to cover the facility from 7 a.m. to approximately 11 p.m. The housekeeping inspectors generally work an 8-hour day shift, but one, Vicky Porter, works in the evening. The laundry attendants work either from 7 a.m. to 3 p.m. or from 3 p.m. to approximately 10 or 10:30 p.m. Finally, the commercial attendant works an 8-hour shift, Monday through Friday. The room attendants, except for the seven supplied by ARRA, earn between $6.75 and $8.15 per hour. The house attendants, apparently including the ones supplied by ARRA, are also entitled to tips and participate in the "eagle card" program which entitles them to lottery tickets based on compliments from guests who complete guest cards concerning room service. The house persons are paid between $6.75 and $8.03 per hour and the housekeeping inspectors receive between $7.75 and $8.50 per hour. Finally, the laundry attendants earn between $6.75 and $8.25 per hour and the range of pay for the commercial attendant is between $6.75 and $7.25 per hour. The housekeeping employees, except the house attendants supplied by ARRA, are eligible for health, dental and life insurance, sick pay, vacations, paid holidays and a 401(k) plan. All housekeeping department employees wear the same type uniform, a green polo shirt and black pants.

The food and beverage department is under the direct supervision of Smith. However, the record discloses that Brooks has supervisory responsibility over the food and beverage employees at night when Smith is not at the facility and the chef, an open position at the time of the hearing, has supervisory responsibility over the kitchen employees. The food and beverage department employs two banquet servers, two banquet setup employees, two cashiers/hostesses, seven restaurant servers, seven room server attendants, four cooks, two kitchen utility employees and three bartenders. In addition, the Employer utilizes two servers furnished by ARRA and three servers supplied by Food Team, discussed in detail below, in its food and beverage operation.

The restaurant servers wait tables and serve meals and drinks to customers. The room server attendants provide room services to the guests. The cashiers/hostesses seat customers in the restaurant and receive payments from patrons for meals and drinks. The banquet setup employees prepare and setup conference and meeting rooms for banquets and group meetings and the banquet servers are responsible for serving attendees at such banquets and group meetings. The cooks prepare meals served at the restaurant and for banquets as well as for employees who utilize the employee cafeteria located in the basement of the hotel. The kitchen utility employees wash kitchen utensils and clean the kitchen area. Finally, the bartenders are responsible for preparing drinks and for controlling the bar area of the hotel.

The restaurant servers and room server attendants employed solely by the Employer are paid from $3.25 to $3.60 per hour but most of their wages appear to come from tips. The other

employees in the food and beverage department receive between $6.50 (entry level for cashiers/hostesses) and $10 per hour for the highest paid cook. Like the restaurant servers and room server attendants, banquet setup, banquet servers and bartenders are entitled to tips. All employees in the food and beverage department employed exclusively by the Employer are eligible for the same benefits received by its other solely employed employees. The employees who work in the food and beverage department wear uniforms which may differ in style and color depending on their position. The schedule for employees in the food and beverage department are posted by management and their work hours vary to cover the time when the Employer's restaurant and bar are open and to cover banquets and special events. It appears that some of these employees may be regular part-time employees but the parties are in agreement, except for the supplied employees, that they are properly included in the unit.

The Employer employs 21 employees in what it classifies as front office positions. It employs six front desk/guest service agents (GSA), four night auditors, eight bellmen/van drivers, one reservationist, and two concierges. The front end operation is under the direct supervision of Brooks and Faisant. The unit placement of the front office employees is in dispute and they are discussed in detail under the unit composition portion of the Decision.

Finally, the Employer employs four maintenance engineers, including the acting chief engineer, John Terry. The chief engineer position, which the parties stipulated was supervisory, is currently vacant. Terry was offered, but declined the chief engineer position for health reasons. The Employer anticipates filling the position in the future. Like the front office employees, the unit placement of the maintenance engineers, including the supervisory status of Terry, is in dispute and will be discussed in detail under the unit composition portion of the Decision.

II. The Joint Employer Issue:

The Employer maintains that it is a joint employer with ARRA and Food Team of the employees who work at its facility supplied by the two supplier employers. The Petitioner declined to take a position on the joint employer issue, but maintains that, in any event, the contract employees should be excluded from the unit. The Employer has a written contractual arrangement with ARRA under which ARRA supplies the Employer with seven room attendants and two food and beverage employees. The contract is effective June 6, 2000 and is for a 1-year period. The contract provides that the Employer will reimburse ARRA at the straight rate of $9.25 per hour for each employee supplied for the first 30 days of employment and after the first 30 days at the rate of $9.75 per hour. The contract prohibits the Employer from directly employing any employee furnished by ARRA for a period of 1 year after such employee ceases performing services for ARRA. The Employer also utilizes three food and beverage employees furnished by Food Team. The Employer does not have a written contract with Food Team. However, the record discloses that the Employer reimburses Food Team at the rate of $8.75 per hour for straight time and at the rate of $13.24 per hour for all overtime worked by each employee supplied by Food Team.

The record discloses that ARRA and Food Team directly employ the employees they supply the Employer. The Employer does not have any involvement in the hiring process or

control over the initial assignment of employees by the supplier employers. ARRA and Food Team establish the rate of pay for their employees and are responsible for all taxes and workers' compensation for such employees. The supplier employers provide the contract employees with any benefits they may receive since they are not eligible for the fringe benefits furnished by the Employer to the employees who it directly employs.

The record discloses that ARRA began supplying employees to the Employer approximately 6 months ago and Food Team has been furnishing the Employer with employees for approximately 1 month. The Employer can discontinue the services of any of the supplied employees, but it is up to ARRA and Food Team to discipline and discharge such employees. However, the record discloses that none of the employees supplied to the Employer have been removed from service. If a disciplinary problem occurred with a supplier employee, the evidence discloses that the Employer would contact the supplier employer and if the circumstances warranted, the Employer could have the employee removed from its service.

Neither ARRA nor Food Team has any supervision or management officials at the Employer's facility and apparently does not have any contact with these employees on a daily basis. The supplied employees in question apparently work exclusively for the Employer who schedules their hours and makes their work assignments. The Employer is also responsible for directing the work of the supplied employees while they are on the job. The Employer collects the time records for these employees which it forwards to the supplier employers to compute their pay. It appears that some of the supplied employees are foreign workers who are in the country on work permits. The supplier employers are responsible for obtaining I-9 forms from such employees, but copies are provided to the Employer.

The contract employees have the same duties and responsibilities as the Employer's exclusively employed employees with whom they work. The contract employees wear the same uniforms, share the same employee facilities and generally work the same hours. However, there was some testimony that ARRA supplied employees may receive more extra work because the Employer does not reimburse ARRA at a higher rate when such employees work overtime. The contract employees have the same lunch and break periods as other employees and use the same employee cafeteria.

Under Board precedent, to establish that two or more employers are joint employers, the entities must share or codetermine matters governing essential terms and conditions of employment of "jointly employed" employees. *Riverdale Nursing Home*, 317 NLRB 881, 882 (1995). See also, *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1123 (3rd Cir. 1982). Such employers must jointly and meaningfully affect matters relating to the employment relationship of the joint employees, such as hiring, firing, disciplining, supervising and directing. *Riverdale Nursing Home*, 317 NLRB at 882; *TLI, Inc.*, 271 NLRB 798 (1984). Here, the Employer assigns, directs, and oversees the daily work of the employees supplied by ARRA and Food Team. Moreover, the supplied employees perform the same duties, wear the same uniforms and share the same employee facilities as the employees exclusively employed by the Employer. The Employer monitors the time worked by the supplied employees and can have the employees removed from its service. On the other hand, the supplier employers are responsible for hiring such employees, paying their wages, deducting taxes and paying for their workers'

compensation. Under such circumstances, it is apparent that the Employer and the supplier employers affect and codetermine essential terms and conditions of employment of the supplied employees. Accordingly, in agreement with the Employer, I find that the Employer is a joint employer with ARRA and Food Team for the employees furnished the Employer by these two supplier employers. *Riverdale Nursing Home*, 317 NLRB at 882; *TLI, Inc.*, supra.

III. Scope of Unit:

Having found that the Employer is a joint employer with ARRA and Food Team, I must consider whether the jointly employed employees supplied by ARRA and Food Team must be included in the unit with the employees exclusively employed by the Employer. The Employer maintains that the supplied employees must be included in the unit with its solely employed employees. On the other hand, the Petitioner contends that the jointly employed employees are properly excluded from the unit of the Employer's own employees whom the Petitioner seeks to represent.

In *M.B. Sturgis, Inc*., et al., supra, the Board recently addressed the question of "whether and under what circumstances employees who are jointly employed by a 'user' employer and a 'supplier' employer can be included for representational purposes in a bargaining unit with employees who are solely employed by the user employer." For many years, prior to *Sturgis*, the Board considered units comprised of jointly employed employees and exclusively employed employees of one of the joint employers to constitute multi-employer bargaining and consequently declined to combine such employees in the same unit absent the consent of all the employers. *Greenhoot, Inc.*, 205 NLRB 250 (1973); *Lee Hospital*, 300 NLRB 947 (1990). See also, *Hexacomb Corporation*, 313 NLRB 983 (1994). In *Sturgis*, the Board noted that *Greenhoot* stands only for the proposition that where two or more user employers obtain employees from a supplier employer, a bargaining unit comprised of all the employees of the user and supplier employers is multi-employer and requires the consent of the respective employers. In *Lee Hospital*, the Board extended the *Greenhoot* multi-employer concept to include situations where a single user employer obtained employees from one or more supplier employer.

In *Sturgis*, the Board recognized the importance of supplied and contract labor in today's "contingent work force." Thus, the Board, in *Sturgis*, reaffirmed *Greenhoot* insofar as it requires employer consent for the creation of true multi-employer units involving separate user employers. However, the Board held that *Lee Hospital* was erroneously decided and as a consequence, numerous employees, as part of the contingent work force, had been denied representational rights under the Act. *M.B. Sturgis, Inc*., et al., 331 NLRB No. 173 slip op. at 1. Thus, the Board overruled *Lee Hospital*. *M.B. Sturgis, Inc*., et al., 331 NLRB No. 173 slip op. at 8. In overruling *Lee Hospital*, the Board, in *Sturgis*, found the fact that a single user employer obtains employees from one or more supplier employer does not establish a true multi-employer relationship and that such supplied employees may be properly included in a unit with the user employer's solely employed employees without the consent of any of the employers. *M.B. Sturgis, Inc*., et al., 331 NLRB No. 173 slip op. at 8-9. See also, *Professional Facilities Management, Inc.*, 332 NLRB No. 40 (2000), as well as pre-*Greenhoot* decisions in *Louis Pizitz Dry Goods Co.*, 71 NLRB 579 (1946); *Taylor's Oak Ridge Corporation*, 74 NLRB 930 (1947);

Stack & Company, 97 NLRB 1492 (1952); cited with approval by the Board in *Sturgis.* Moreover, in reaffirming the general principles of *Greenhoot*, the Board clarified that decision to make clear that an overall unit of the employees of a supplier employer could be appropriate regardless of the number of user employers to whom such employees may be assigned. *M.B. Sturgis, Inc*., et al., 331 NLRB No. 173 slip op. at 11.

Although the Board, in *Sturgis*, found that jointly employed and solely employed employees of a single user employer, like here, could be included in the same unit, it specifically noted that it did not intend to suggest that every unit combining both groups of employees would be found appropriate. *M.B. Sturgis, Inc., et al.*, 331 NLRB No. 173 slip op. at 9. The Board held that its traditional community of interest factors must be applied in determining the appropriateness of units in which a party seeks to include both jointly supplied employees and the solely employed employees of a user employer. *M.B. Sturgis, Inc., et al.*, 331 NLRB No. 173 slip op. at 12.

As the Board instructed in *Sturgis*, I have applied the standard community of interest criteria in determining whether the jointly employed employees here, as contended by the Employer, must be combined in the same unit with its regular employees whom the Petitioner seeks to separately represent. The traditional community of interest test examines a variety of factors to determine whether a mutuality of interest in wages and working conditions exist among the employees in question. *Kalamazoo Paper Box*, 136 NLRB 137 (1962); *Swift & Company*, 129 NLRB 1391 (1961). In analyzing community of interest among employee groups, the Board considers bargaining history, functional integration, employee interchange, employee skills, work performed, common supervision and similarity in wages, hours, benefits and other terms and conditions of employment. *J.C. Penney Company*, 328 NLRB No. 105 (1999); *Armco, Inc.*, 271 NLRB 350 (1984).

In *Kalamazoo*, the Board stated:

> Because the scope or unit is basic to and permeates the whole collective bargaining relationship, each determination, in order to further effective expression of the statutory provisions, must have a direct relevancy to the circumstances within which collective bargaining is to take place. For, if the unit determination fails to relate to the factual situation with which the parties must deal, efficient and stable collective bargaining is undermined rather than fostered. Id. at 137. Accord: *Gustave, Inc.*, 257 NLRB 1069 (1981).

Thus, when the interests of one group of employees are dissimilar from those of another group, the employees need not be combined in a single unit. *Swift & Company*, supra. However, the fact that two or more groups of employees may have some different interests does not render a combined unit inappropriate if there is a sufficient community of interest among all of the employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963). See also, *Brand Precision Services*, 313 NLRB 657 (1994).

In applying the community of interest test to determine the scope and composition of bargaining units, the Board has consistently held that Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining and that there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). The Act requires only that the unit sought be appropriate for the purposes of collective bargaining. *National Cash Register Company*, 166 NLRB 173 (1967). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Company*, 322 NLRB 723 (1996); *Dezcon, Inc.*, 295 NLRB 109 (1989). Although the broader unit scope urged by the Employer may be appropriate, it does not, *ipso facto*, render a unit compatible to the one sought by the Petitioner inappropriate. *Overnite Transportation Company*, supra. For example, in determining whether a unit of drivers and dock workers, excluding mechanics was appropriate, the Board, in *Overnite*, found that the mechanics could constitute a separate appropriate unit. Upon finding the mechanics could constitute a separate unit, the Board concluded that the mechanics did not share such a close community of interest with the drivers and dock workers to mandate their inclusion in the same unit. *Overnite Transportation Company*, 322 NLRB at 724-725.

I must now review the relationship between the Employer's solely employed employees and its supplied employees to determine whether they must be combined in the same unit. The record clearly discloses that the jointly employed employees share some interests with the solely employed employees of the Employer whom the Petitioner seeks to represent. For example, the seven room attendants supplied by ARRA work side-by-side with the Employer's attendants. The supplied room attendants perform the identical work under the same supervision and working conditions as the Employer's regular employees. All room attendants, regardless of whether they are jointly or solely employed by the Employer, work essentially the same hours and are scheduled in the same manner by common supervision. The supplied attendants are apparently assigned exclusively to the Employer and wear the same uniforms as the Employer's regular employees which contain the name of the hotel. Moreover, the Employer monitors the supplied attendants' time which it forwards to ARRA for payroll purposes.

Likewise, the two servers furnished by ARRA and the three servers supplied by Food Team have many interests in common with the food and beverage employees solely employed by the Employer. Like the ARRA supplied room attendants, the jointly employed food and beverage employees work side-by-side with the Employer's regular employees and perform the same duties. The supplied food and beverage employees are assigned to work exclusively for the Employer and the Employer's supervisors schedule their hours and make their work assignments. Both the jointly and exclusively employed food and beverage employees work under the same supervision and wear similar uniforms. The Employer also monitors the time worked by the joint employees and forwards the time records to the supplier employers for payroll purposes.

Although the above factors establish that the jointly employed and solely employed employees of the Employer have many common interests, it is undisputed that there are some

major differences in their terms and conditions of employment. For example, the jointly employed employees are hired by the supplier employers without any input by the Employer. The supplier employers establish and control the wages received by the supplied employees and such employees continue to be carried on the payroll of the supplier employers. The supplier employers are also responsible for all taxes and workers' compensation for the supplied employees. The jointly employed employees are not entitled to the benefits furnished by the Employer for its solely employed employees and fringe benefits, if any, enjoyed by the jointly employed employees are provided by the supplier employers. Although the Employer can have a jointly employed employee removed from service, it is solely the responsibility of the supplier employers to discharge or discipline the supplied employees. Finally, the supplied employees do not automatically become a regular employee of the Employer. Indeed, it does not appear from the record that the supplied employees are even considered for regular employment by the Employer and with respect to the ARRA furnished contract employees, the Employer is specifically prohibited by the labor contract from directly hiring any of them for at least a year after they cease performing work for ARRA.

Having carefully considered the entire record and the traditional community of interest factors relied on by the Board, I conclude that the employees solely employed by the Employer, whom the Petitioner seeks to represent, excluding the employees supplied by the two joint employers, constitute an appropriate unit for collective bargaining. The combined unit of the supplied employees and the Employer's regular employees, as urged by the Employer, may also be appropriate. Indeed, there are a number of factors, discussed in detail above, which establishes common interest between the supplied employees and those employed exclusively by the Employer. For example, both groups of employees perform the same type work, wear the same type uniforms, work essentially the same hours, share the same employee facilities and are subject to the same supervision. On the other hand, there are certain differences, as noted above, between the working conditions of the two groups of employees. Thus, the supplied employees are hired and carried on the payrolls of the supplier employers. The supplier employers are responsible for all taxes and the workers' compensation for the supplied employees. Moreover, the supplied employees are not entitled to any of the benefits available to the Employer's solely employed employees. Although the Employer may have supplied employees removed from service, the supplier employers are responsible for disciplining and discharging the supplied employees.

Weighing all the existing factors, I am of the opinion that there are sufficient dissimilarities between the two groups of employees to warrant a finding that the employees employed solely by the Employer constitute an appropriate unit. *Overnite Transportation Company*, supra.; *United Stores of America*, 138 NLRB 383 (1962). Thus, the Petitioner may represent the Employer's solely employed employees in a separate unit. *Overnite Transportation Company*, supra.; *M.B. Sturgis, Inc*., et al., supra. In reaching this decision, I also find significant that the jointly employed employees, like the mechanics in *Overnite*, may constitute a separate, or part of a separate, appropriate unit comprising the supplier employers' employees. *M.B. Sturgis, Inc.,* et al., 331 NLRB No. 173 slip op. at 11; *Overnite Transportation Company*, supra.

The assertion by the Employer in its brief that the Board in *M.B. Sturgis, Inc*., et al., supra. held that employees furnished by a supplier employer to a user employer may be combined with

the solely employed employees of the user employer is correct. In addition, I agree with the Employer that the supplied employees here have many interests in common with the Employer's regular employees. Indeed, a unit of the combined employees may well be appropriate for purposes of collective bargaining. However, I do not agree, as suggested by the Employer in its brief, that *Sturgis* requires the inclusion of an employer's jointly supplied employees in the same unit with its solely employed employees merely because all employees work together and have some common interests. To the contrary, *Sturgis* provides that the Board's traditional community of interest factors should be applied in making such unit determinations. Applying such factors, I have determined that the Employer's solely employed employees, excluding the supplied employees, constitutes an appropriate unit for purposes of collective bargaining.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that a unit limited in scope to the Employer's solely employed employees is appropriate for the purposes of collective bargaining. *Overnite Transportation Company*, supra; *United Stores of America*, supra; *M.B. Sturgis, Inc*., et al., supra. Accordingly, I shall exclude the employees supplied to the Employer by ARRA and Food Team from the unit.

IV. The Composition of the Unit:

I must now consider the composition of the unit. The Petitioner seeks to represent a unit limited to the Employer's housekeeping and food and beverage employees, described in detail above, while the Employer maintains that, in addition to the employees sought by the Petitioner, any unit must also include the front office department and maintenance department employees. The parties are also in disagreement over the unit placement of the acting chief engineer, John Terry. Assuming the maintenance employees are properly included in the unit, the Petitioner, contrary to the Employer, would apparently exclude Terry from the unit on the additional ground that he is a supervisor within the meaning of Section 2(11) of the Act.

(a) Front Office Department Employees:

The front office is considered the "hub" of the hotel. This is the area where guests check in and out of the hotel. The front office is also where guests make requests for any of their needs while staying at the facility. The front office department employs six front desk/guest service agents (GSA), four night auditors, eight bellmen/van drivers, one reservationist, and two concierges. The front office employees report to front office manager/assistant director of operations, David Brooks, or the revenue manager/assistant front office manager, Paul Faisant. Brooks occasionally serves as manager on duty (MOD) and has overall responsibility for the hotel, particularly at night when General Manager Shah and Assistant General Manager Smith are not on duty. However, there is no record evidence that Faisant has supervisory authority over any of the employees whom the Petitioner seeks to represent.

The front desk/GSA employees apparently work during the day. They are responsible for checking guests in and out of the hotel. The front desk/GSA employees assign rooms to guests and register them into the computer system. The front desk/GSA employees also answer telephones and handle any requests that guests may have related to their stay in the hotel. If a

guest makes a request, the front desk/GSA employee records and attempts to get the matter corrected by informing the appropriate employee who may be employed in another department. In addition, the front desk/GSA employee distributes keys to rooms, vans and the club room to other unit employees.

The night auditors have essentially the same duties at night as those performed by the front desk/GSA employees during the day. In addition, the night auditors make sure that the activities performed by other hotel employees match with the proper front office computer entry. For example, the occupancy rate at the front desk computer should match with the occupancy level entered in the housekeeping system. The night auditors are also responsible for making sure that cash received from guests at the front desk, as well as the cash received by the cashiers/hostesses in the restaurant, match the receipts in the computer system.

The bellmen/van drivers are responsible for transporting guests to and from the airport and hotel. They also assist the guests with their luggage as they check in or out of the facility. In addition, the bellmen/van drivers occasionally assist guests in moving their luggage from the lobby to their rooms. Finally, the bellmen/van drivers transport guests to other destinations within approximately 2 miles of the hotel.

The reservationist makes reservations for groups, conventions or any special rate (negotiable local rate) individual or group. In addition, any telephone calls made to Holiday Inn's 800 number requesting special information about the Employer's facility are transferred to the reservationist to respond.

All front office employees, except the concierges who I do not consider to be true front office employees and who are discussed separately in the Decision, are primarily involved in guest relations, such as checking guests in and out of the hotel and transporting them to and from the facility. A number of the front office department employees are also responsible for taking telephone messages, maintaining correct billings and making sure that room occupancy computer records in the front office match those of the housekeeping department. In addition, the night auditors are responsible for the compilation of cash received at the front desk and restaurant. The bellmen/van drivers, in addition to their transportation duties, assist guests with their luggage and the reservationist is responsible for handling specific types of reservations.

The front desk/GSA employees and night auditors are assigned to cover the front desk 24 hours per day. The work hours for the bellmen/van drivers are scheduled so at least one of them is at the hotel from 4 a.m. to approximately 1:30 a.m. The reservationist works an 8-hour day from 8 a.m. to 4 p.m., Monday through Friday. The front office department employees wear uniforms which vary in style and color depending on their position. The front desk/GSA employees and night auditors wear business attire and the bellmen/van drivers wear t-shirts or jackets with the Employer's logo. The reservationist apparently is not required to wear any type of uniform. The front desk/GSA employees receive between $7.25 and $8.25 per hour; the night auditors earn between $8.50 and $10 per hour; the bellmen/van drivers are paid between $5.25 and $5.75 per hour but are entitled to tips; and the reservationist's pay range is between $9 and $10 per hour. All employees solely employed by the Employer, including front office department employees, are entitled to the same fringe benefits.

The record, including numerous exhibits introduced by the Employer, discloses that there is some contact between the front office staff and other groups of employees. However, it appears that most of the contact is routine. For example, guests may report a problem or make a request for services to a front office employee who will, in turn, ask an employee in maintenance or housekeeping to repair or respond to the request. In making sure the problem is corrected or the services are provided, the front office employees may enter the request on a log or prepare order forms which are returned to them by housekeeping or maintenance after the problem is corrected or the services are rendered. There is also coordination between the front office employees and housekeeping concerning the availability of rooms and in making sure room occupancy is correctly listed on both the housekeeping and the front desk computers. The front desk/GSA employees and night auditors distribute keys to other unit employees. In addition, housekeeping employees may turn in room service cards completed by guests relating to room services. These cards are used to reward housekeeping employees with lottery tickets when guests compliment them for services. Moreover, all departments participate in the Employer's planning committee, safety committee and guest tracking program. Finally, there is some routine contact between the cashiers/hostesses in the food and beverage department and front office personnel, particularly the night auditors, in reconciling cash received in the restaurant with computer receipts.

The record does not reflect any temporary transfers of employees between the front office employees and other groups of employees. On at least one occasion, however, some front office employees apparently served as waitresses in the restaurant in an emergency situation when the scheduled servers did not report for work. Moreover, there have been some permanent transfers of employees, but only two record incidents involved employees transferring into or out of front office positions. Finally, there appears to be very few instances of front office employees performing tasks generally assigned to other groups of employees.

The Board uses essentially the same criteria in considering the appropriateness of the composition of requested bargaining units as it does in determining whether the scope of such units is appropriate. Thus, the Board only requires that the unit be an appropriate unit for purposes of collective bargaining. *Morand Brothers Beverage Co.*, supra; *Overnite Transportation Company*, supra. The Board also applies the same factors in determining appropriate units in the hotel industry. *Omni International Hotel of Detroit,* 287 NLRB 475 (1987); *Dinah's Hotel Corporation d/b/a Dinah's Hotel & Apartments*, 295 NLRB 1100 (1989). In *Dinah's Hotel & Apartments*, the Board, in finding that the front desk employees constituted an appropriate unit, specifically held that in the hotel industry a union need seek only "an appropriate unit, and is not required to seek the most appropriate unit." *Dinah's Hotel & Apartments*, 295 NLRB at 1101.

I am persuaded that the unit sought by the Petitioner, excluding the front office department employees, except for the concierges discussed below, is appropriate for the purposes of collective bargaining. *Omni International Hotel of Detroit*, supra. See also, *Ramada Inns, Inc.*, 221 NLRB 689 (1975), where the Board excluded front desk employees from a housekeeping, laundry and maintenance unit. Thus, I am satisfied, based on the record here, that there is not such a high degree of integration of functions and mutuality of interest between the front office employees, except for the concierges discussed below, and the other hotel employees the

Petitioner seeks to represent to require their inclusion in the same unit. *Ramada Inns, Inc.*, 221 NLRB at 690; *Dinah's Hotel & Apartments*, supra. Moreover, I note that the front office department employees may constitute a separate appropriate unit and under the Board's rationale in *Overnite* may be excluded from the unit the Petitioner seeks to represent. *Overnite Transportation Company*, supra; *Dinah's Hotel & Apartments*, supra. In reaching my decision to exclude the front office department employees, I also find highly significant, the area practice in the hotel industry in Columbus, Ohio, which the Board has long recognized, of excluding front office employees, like those here, from other groups of hotel employees. *Management Director's, Inc. d/b/a Columbus Plaza Motor Hotel*, 148 NLRB 1053 (1964).

The arguments and case authority cited by the Employer in its brief do not support its position that the front office employees here must be included in the same unit with all other employees. Initially, I agree that the Employer's facility is integrated and there is substantial contact among the employees but this is true of most operations in the hotel industry. However, such integration of operations and employee contact are not sufficient reasons for requiring that all hotel employees be combined, as the Employer appears to argue in its brief, in a single unit. This was the rule applied in *Arlington Hotel Company*, 126 NLRB 400 (1960) which the Board long ago abandoned because of its rigidity. *Holiday Inn Restaurant*, 160 NLRB 927 (1966). The Board has consistently refused to return to such a rigid rule, as the Employer essentially advocates, to require that all hotel employees be combined in a single unit based on the mere integration of operations and employee contact. See, e.g., *Omni International Hotel*, supra; *Dinah's Hotel & Apartments*, supra. Although in several decisions involving Holiday Inn facilities, relied on by the Employer and distinguished below, the Board included front office employees in the same unit with other hotel employees, it has not recognized any established practice in the Holiday Inn chain of hotels including front office employees with other groups of employees and applies the same community of interest test in determining the unit placement of such employees as it does in cases involving other hotel employers. *Holiday Inn Restaurant*, supra. Indeed, the Board has excluded front office employees from units of other hotel employees in a number of decisions involving Holiday Inn facilities. See, e.g., *Holiday Inn, Troy*, 238 NLRB 13369 (1978); *Holiday Inn South*, 241 NLRB 235 (1979).

The specific cases relied on by the Employer in its brief do not require a finding that the front office employees must be included in the same unit with its other employees. *Atlanta Hilton and Towers*, 273 NLRB 87 (1984), cited by the Employer, is distinguishable from the subject case. In *Atlanta Hilton*, there was greater contact and interchange among the employees than there is here and the general manager was involved in even minor decisions throughout the hotel. In addition, the Board in *Atlanta Hilton* noted substantial overlapping job duties and employee transfers. The record here shows very few transfers and little overlapping duties between the front office employees and the other hotel employees. Moreover, in *Atlanta Hilton*, unlike here, the petitioning labor organization sought two separate units of employees, found appropriate by the Regional Director, notwithstanding that some employees in each unit shared a stronger community of interest with employees in the other unit. Such is not the case here. Finally, there was no recognized industry practice in the Atlanta area, like there is in Columbus, excluding front office employees from other groups of hotel employees.

Golden Eagle Motor Inn, 246 NLRB 323 (1979), cited by the Employer, does not support its position that the front office employees here must be included in the unit. In *Golden Eagle*, unlike here, the front office employees performed routine maintenance as a daily part of their job duties and when working on the afternoon or night shifts regularly cleaned and made up rooms. *Ramada Beverly Hills*, 278 NLRB 691 (1986), cited by the Employer in its brief, is also distinguishable from the case *sub judice*. In *Ramada Beverly Hills*, the Board, in finding an overall unit to be appropriate, noted the substantial overlap of employee job functions which does not exist to any great extent in the subject case. More importantly there was no Board recognized industry practice in *Golden Eagle* and *Ramada Beverly Hills*, supra, like here, excluding front office employees from other groups of employees in hotel units.

Likewise, *Holiday Inn Atlanta Northwest*, 214 NLRB 930 (1974), does not advance the Employer's position that the front office employees must be included in the unit in the instant case. In *Holiday Inn Atlanta*, the Board noted that front desk employees spent at least 1 hour per day assisting waitresses and that each desk clerk was regularly scheduled to inspect four or five rooms per day to make sure they were properly cleaned. In addition, the front desk employees once or twice a week obtained sheets and towels and occasionally made adjustments on television sets and temperature controls. The front office employees here rarely, if ever, perform such functions. Similarly, the front desk clerks in *Holiday Inn, Pittsburgh Parkway West, Carnegie*, 214 NLRB 651 (1974), another case relied on by the Employer, delivered room service and cleaned rooms. There is no record evidence that the front office employees here regularly perform such duties. *Holiday Inn Alton*, 270 NLRB 1405 (1984), cited by the Employer in its brief, is also distinguishable from the case *sub judice*. In *Holiday Inn Alton*, the petitioning labor organization sought to represent only the housekeeping employees. In finding such a limited unit to be inappropriate, the Board noted that the front desk clerks cleaned guest rooms and supplied guests with towels, that the bellmen, who were part of the front office, made room service deliveries, set up the conference rooms and cleaned the lounge and public areas of the hotel. The front office employees here do not have such widespread overlapping duties. Moreover, there was no bargaining practice excluding front office employees from other groups of hotel employees, like here, on which the Board could rely in *Holiday Inn, Atlanta Northwest*, supra*; Holiday Inn, Pittsburgh Parkway*, supra and *Holiday Inn Alton*.

In *Westin Hotel*, 277 NLRB 1506 (1986), cited by the Employer in support of its position that an overall unit here is appropriate, the Board merely found that the hotel's maintenance employees did not constitute a separate appropriate unit. I agree that *Westin* rebuts the Petitioner's contention that the maintenance engineers here should be excluded from the unit. Thus, I have included the maintenance engineers in the unit. However, *Westin* does not support the Employer's position that the front office employees should be included in the unit. Indeed, the Board did not even make a unit finding in *Westin*.

I also note that none of the cases relied on by the Employer addresses the decisional approach adopted by the Board in considering whether certain groupings of employees may properly be excluded from a requested unit on the ground that such employee groups may constitute a separate appropriate unit. The Board applied this principle in finding that mechanics could be excluded from a unit of dock workers and drivers in *Overnite Transportation Company*, supra. Specifically, in *Overnite*, the Board considered whether the mechanics could constitute a

separate appropriate unit. Upon finding that the mechanics could constitute a separate unit, the Board concluded that mechanics did not share such a close community of interest with the dock workers and drivers to require their inclusion in the same unit. See also, *Overnite Transportation Company*, 325 NLRB 347 (1996); *Overnite Transportation Company*, 325 NLRB 612 (1998). As previously noted, I have concluded, based on Board precedent, that the front office employees here could constitute a separate appropriate unit. *Dinah's Hotel & Apartments*, supra. Thus, applying the rationale of *Overnite*, the front office employees may properly be excluded from the unit sought by the Petitioner. The Employer did not address this issue in its brief or distinguish the front office employees here from those in *Dinah's Hotel & Apartments*, supra, or from the mechanics vis-à-vis the dock workers and drivers in *Overnite*. See, *Dinah's Hotel & Apartments*, supra; *Overnite Transportation Company*, supra.

Finally, the Employer's argument that the industry practice relied on by the Board in excluding the front office employees in *Columbus Plaza Motor Hotel*, supra, should not be given any weight here is without merit. Although the record identifies only one hotel in Columbus with whom the Petitioner has a collective-bargaining relationship, the applicable contract covering housekeeping employees does not include the front office employees. Moreover, there is no evidence of any change in the industry practice of excluding front office employees from other groups of hotel employees in the Columbus, Ohio area. Contrary to the unsupported assertion in the Employer's brief, there is absolutely no evidence that the industry practice of excluding front office employees from hotel units failed to establish stable bargaining relations in the Columbus, Ohio area. Indeed, I am unaware of any Board decision since *Columbus Plaza Motor Hotel*, supra, in which the Board has indicated that it does not consider area practice an important factor in determining the composition of units in the hotel industry. Accordingly, I am of the opinion that the long recognized industry practice of excluding front office employees from other units of hotel employees in the Columbus, Ohio area is entitled to significant weight. See, *LaRonde Bar & Restaurant, Inc*., 145 NLRB 270 (1967). Moreover, I note that the Board has excluded front office employees, similar to those here, from units of other hotel employees absent any local industry practice or bargaining history. *Regency Hyatt House*, 171 NLRB 1347 (1968).

Based on the foregoing, the entire record, and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the front office department employees, except for the concierges, whom I do not consider to be front office employees, do not share such a substantial community of interest with the other employees the Petitioner seeks to represent to require their inclusion in the same unit. *Ramada Inns, Inc.*, supra; *Dinah's Hotel & Apartments*, supra. This is particularly true in Columbus, Ohio, where the Employer's facility is located, in view of the area practice, which the Board has long recognized, of excluding front office employees from other groups of hotel employees. *Columbus Plaza Motor Hotel*, supra. Accordingly, I shall exclude the front office department employees, except the concierges discussed below, from the unit.

(b) Concierges:

The two concierges are considered by the Employer as front office department employees and are under the immediate supervision of the front office supervisors. The concierges work

Monday through Friday. One of the concierges works from 6 a.m. to 11 a.m. and the other from 5 p.m. to approximately 10 p.m. Except for occasionally transporting guests using the hotel's vans or running errands to fill requests made by guests at the front office, the concierges have little work-related contact with the front office employees. Indeed, the record discloses that the concierges' work location is not even on the first floor. Instead, the concierges primarily work in the priority club on the eleventh floor of the hotel.

The concierges report directly to the priority floor where their primary duties are to serve the priority club guests on the eleventh floor. Except for being more detailed and personal, the services they provide are essentially the same as those performed by the room server attendants and other unit employees for hotel patrons located on other floors of the facility.

The concierge who works mornings serves a continental breakfast to the priority floor patrons and the evening concierge serves them cocktails and hors d'oeuvres. In addition, the morning concierge, after he finishes serving the priority guests a continental breakfast, reports to the employee cafeteria in the basement where he serves lunch to the hotel employees. The concierges are also responsible, like other unit employees on other floors, for resolving any complaints or concerns of the guests.

The concierges wear business attire and are paid between $7.50 and $9 per hour. Like the room attendants and room server attendants, the concierges are entitled to tips. The concierges are entitled to the same fringe benefits as the other employees solely employed by the Employer. The concierges have an established schedule and except for occasionally transporting guests or running special errands, there is no record evidence that they interchange with other employees.

Although the concierges could arguably be included in a departmental unit of front office department employees, the record here discloses that their interests are much more closely aligned with those of the room server attendants and other employees whom the Petitioner seeks to represent than with the front office employees. Except for being listed by the Employer as part of the front office department, reporting to front office supervision and occasionally transporting guests or running special errands that may be requested by the desk clerks, the concierges have little work-related contact or interest with front office employees. Initially, the concierges' work station is not in the front office but is on the eleventh floor of the facility. Moreover, the concierges' primary duties are responding to the concerns of the priority guests on the eleventh floor and serving them food and beverages. These are the same duties that the room server attendants and other employees sought by the Petitioner perform on other floors of the hotel. Under such circumstances, it is apparent that the concierges are artificially placed in the front office department and their primary community of interest is with the room server attendants and other employees whom the Petitioner seeks to represent. Thus, I do not consider the concierges to be true front office employees and they are not included among the front office employees when I refer to that group of employees in the Decision.

Applying the criteria utilized by the Board in determining appropriate units in the hotel industry, it is apparent from the record that the concierges share an overwhelming community of interest with the employees whom the Petitioner seeks to represent. See, e.g. *Omni International Hotel*, supra; *Regency Hyatt House*, supra. Based on the foregoing, the entire record and careful

consideration of the arguments of the parties at the hearing and in their briefs, I find that the concierges must be included in the unit sought by the Petitioner. *Regency Hyatt House,* supra. Accordingly, I shall include the concierges in the unit.

(c) The Maintenance Engineers:

Contrary to the Employer, the Petitioner would exclude the four maintenance engineers from the unit. The maintenance engineers generally work under the immediate supervision of a chief engineer. However, the chief engineer position was vacant at the time of the hearing. At that time, John Terry was acting chief engineer, but he had declined the chief engineer position on a permanent basis for health reasons. The Employer anticipates filling the position in the near future.

The maintenance engineers work throughout the facility correcting problems and performing preventive maintenance. However, there is a maintenance shop, which is apparently used by the maintenance engineers, located in the basement of the facility. The maintenance engineers are responsible for maintaining the fixtures of the building as well as performing preventive maintenance on the structure. They are also responsible for repairing furniture and rotating the mattresses on the beds in the guest rooms. In addition, the maintenance engineers make sure that the televisions are performing properly, that the fire detectors work, that the heating and air conditioning and water systems are functioning properly and that windows will not open beyond the established safety limitation. However, there is no evidence that the maintenance employees rebuild or make major repairs on the heating, air conditioning and water systems. The maintenance employees are notified of problems such as a television not performing properly, a toilet overflowing or a room or the restaurant being too hot or too cold. The maintenance engineers may be advised of such problems by front office personnel, housekeeping or food and beverage employees. After being notified of a problem, the maintenance engineers will correct the problem. The maintenance engineers also assist in cleaning rooms when it is necessary to shampoo, sanitize or remove stains from the carpet. Finally, the maintenance engineers log temperatures to make sure that refrigeration units are chilled according to health codes and that the water used in dishwashers is properly heated.

The maintenance engineers earn between $9.75 and $15.15 per hour and are not entitled to tips. The maintenance engineers work either from 6:30 a.m. to 3 p.m. or from 3 p.m. to 11 p.m. They are entitled to the same benefits as all other employees solely employed by the Employer. The record does not establish that the maintenance engineers possess any unique or specialized skills and their job functions appear to consist primarily of routine maintenance work. In addition, the maintenance engineers are responsible for certain cleaning functions which are similar to the duties of the housekeeping employees whom the Petitioner seeks to represent. Although the maintenance engineers generally receive a higher hourly rate than most other employees, the record discloses some overlap of wages between the maintenance engineers and other employees the Petitioner seeks to represent.

A careful review of the record does not support a basis for finding that the maintenance engineers constitute a separate appropriate unit or for excluding them from the unit of manual operating employees sought by the Petitioner. Although the Board will find a separate unit of

maintenance engineers to be appropriate in the hotel industry, it must be established that such employees have specialized training, perform skilled maintenance work and have separate supervision and working conditions. See, *Omni International Hotel of Detroit*, supra; *Hilton Hotel*, 287 NLRB 359 (1987). There is no record evidence that the maintenance engineers here have any specialized training, perform highly skilled maintenance work or have substantial different working conditions than the other unit employees. Moreover, at this time, with the chief engineer position being vacant, the maintenance engineers apparently share common supervision with other employees, particularly when the acting chief engineer is not at the facility. Indeed, the maintenance engineers here are very similar to the maintenance employees in *Westin Hotel*, supra, where the Board found that the maintenance employees, based somewhat on an industry practice similar to the practice in Columbus, did not constitute an appropriate unit separate from the other manual operating employees.

Omni International Hotel of Detroit, supra, relied on by the Petitioner for excluding the maintenance engineers, is clearly distinguishable from the subject case. In *Omni*, the Board found a separate unit of maintenance department employees to be appropriate emphasizing that the maintenance employees were separately supervised by the chief engineer who interviewed and made all hiring decisions. Here, there is no evidence that the chief engineer, when the position was filled, ever interviewed employees and the record discloses that all final hiring decisions are made by the general manager. Moreover, even when the chief engineer position was filled, it appears that maintenance employees on duty, when the chief engineer was not at the facility, shared common supervision with other unit employees.

Moreover, the Board, in *Omni*, noted that the maintenance employees used skills unique to their classification and were required to have at least 1 year experience in their trade before being employed. Here, there is no evidence that the maintenance engineers are required to have any prior experience or training. More importantly, and contrary to the assertion in the Petitioner's brief, the maintenance engineers here do not perform highly skilled maintenance work. Indeed, their primary duties appear to consist of routine maintenance tasks such as correcting overflowing toilets, making sure television cable is properly attached, repairing furniture and checking the temperature of the heating, air conditioning and water systems, making sure they are functioning correctly rather than making major repairs on the systems. I also find noteworthy the fact that the maintenance engineers here, unlike in *Omni*, are responsible for cleaning, shampooing, sanitizing and removing stains from carpets in guest rooms which is similar work to that performed by various housekeeping employees.

Finally, in *Omni*, the Board emphasized the extensive area practice of separate representation of maintenance employees in the hotel industry in Metropolitan Detroit. Unlike front office employees, there is no evidence of an industry practice of excluding maintenance employees from other units of hotel employees in Columbus. To the contrary, the collective-bargaining contracts relied on by the Board in *Columbus Plaza Motor Hotel*, supra, in finding that the industry practice in Columbus warranted excluding front office employees, do not establish a practice of excluding maintenance employees. Indeed, three of the five applicable contracts, cited by the Board in *Columbus Plaza Motor Hotel*, supra, included maintenance employees in the same unit with other hotel employees. Thus, the Board, in *Columbus Plaza Motor Hotel*, supra, over the objection of the petitioning labor organization, included the

maintenance employees in the unit with the housekeeping and food and beverage employees. There is no record evidence that there has been any change in the practice in the hotel industry in the Columbus area regarding the unit placement of maintenance employees.

Under these circumstances and having carefully considered the entire record and arguments of the parties at the hearing and in their briefs, I find that the maintenance engineers share such a substantial community of interest with the other employees sought by the Petitioner to require their inclusion in the same unit. *Westin Hotel*, supra; *Columbus Plaza Motor Hotel*, supra. Accordingly, I shall include the maintenance engineers in the unit.

(d) John Terry:

In addition to its position, which I have found to be without merit, that Terry should be excluded from the unit as a maintenance engineer, the Petitioner apparently would also exclude him on the additional ground that he is a supervisor within the meaning of Section 2(11) of the Act. Terry is currently acting chief engineer, but has declined the position of chief engineer, a stipulated supervisory position, for health reasons. The Employer originally took the position that Terry's unit placement would depend on whether he was still acting chief engineer at the time of the election or whether the Employer had filled the chief engineer position by that time. However, the Employer apparently altered its position and at the conclusion of the hearing maintained that Terry should be included in the unit. In view of the conflicting positions of the parties, the uncertainty as to Terry's future job status and the lack of detailed record evidence as to his current authority and responsibilities, I shall permit Terry to vote subject to challenge. Accordingly, I hereby instruct my agent conducting the election to challenge the ballot of John Terry if he appears at the polls to vote.

V. Appropriate Unit:

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

> **All full-time and regular part-time housekeeping department, food and beverage department and maintenance department employees, including room attendants, house persons, housekeeping inspectors, laundry attendants, the commercial attendant, banquet servers, banquet setup employees, cashiers/hostesses, restaurant servers, room server attendants, cooks, kitchen utility employees, bartenders, maintenance engineers, and concierges employed solely by the Employer at its Columbus, Ohio facility, excluding all employees supplied by supplier employers, including ARRA Corporation and Food Team, Inc., the general manager's secretary, the controller, the assistant controller, the sales coordinator, sales managers, the director of sales, the human resources manager, office clerical employees, front office department employees, including the front desk/GSA employees,**

night auditors, bellmen/van drivers, the reservationist, and all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Section 103.20 of the Board's Rules and Regulations requires that the Employer shall post copies of the Board's official notice of election in conspicuous places at least three full working days prior to 12:01 a.m. on the day of the election. The term "working day" shall mean an entire 24 hour period excluding Saturdays, Sundays and holidays. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Hotel Employees Restaurant Employees International Union.**

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **October 26, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **November 2, 2000**.

Dated at Cincinnati, Ohio this 19th day of October 2000.

/s/ Richard L. Ahearn

Richard L. Ahearn, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

420-1200-1281
420-5000-5034
440-3350-7500